

**President's Rulings on
Committee Stage Amendments proposed by Members to
Legislative Council (Amendment) Bill 1999**

Introduction

Twelve Members have given notice to respectively move a total of 15 sets of Committee Stage amendments (CSAs) to the Legislative Council (Amendment) Bill 1999 (the Bill).

2. I am required to rule, under Rules 57 of the Council's Rules of Procedure which are made in pursuance of Article 75 of the Basic Laws, whether:

- (a) the proposed CSAs are relevant to the subject matter of the Bill and to the subject matter of the clauses to which they relate (Rule 57(4)(a)); and
- (b) the object or effect of the proposed CSAs may be to dispose of or charge any part of the revenue or other public moneys of Hong Kong (Rule 57(6)). If they are, then the Members concerned may not move them without the written consent of the Chief Executive.

3. The Secretary for Constitutional Affairs who introduced the Bill has been asked to offer his views on the proposed CSAs. He has commented that six sets of the proposed CSAs contravene Rule 57 of the Rules of Procedure.

4. The Secretary has also commented that some of the above CSAs and other proposed CSAs have no merit. Moreover, as some CSAs relate to public expenditure or political structure or the operation of the government or

government policies, they may not be introduced by Members because of Article 74 of the Basic Law.

5. In the rulings that I made in March 1999, on the CSAs proposed by Members to the District Councils Bill, I already stated that the President is bound by the Council's Rules of Procedure. In regard to CSAs proposed by Members, I am only empowered to rule on their admissibility under Rule 57 of the Rules of Procedure. In the present case, I shall therefore stand by my view that I cannot deal with those points raised by the Secretary on the merits or otherwise of the proposed CSAs or those based on his understanding of Article 74 of the Basic Law.

Views of the Secretary for Constitutional Affairs on the proposed CSAs relating to Rule 57

Dr Hon YEUNG Sum's set of proposed CSAs to various clauses concerning the composition of the Legislative Council

6. Dr YEUNG Sum's proposed CSAs seek to provide for the return of all 60 Members of the Legislative Council by geographical constituencies elections, and to abolish functional constituencies and the Election Committee.

7. The Secretary considers that the purpose of the Bill is to give effect to the provisions in the Basic Law relating to the second term of the Legislative Council. Annex II of the Basic Law, read in conjunction with Article 68, clearly stipulates that the second term of the Council is to be composed of 24 members returned by geographical constituencies, 30 by functional constituencies and 6 by the Election Committee. The CSAs are therefore not within the scope of the Bill.

Hon CHEUNG Man-kwong's CSA - new Clause 40A

8. Mr CHEUNG's CSA seeks to provide that the Chief Executive in Council, in making regulations under section 82 of the Legislative Council Ordinance for the better carrying out of the purpose of the Ordinance, may also provide for the reimbursement of an amount (which he may prescribe) to candidates to subsidize their election expenses if they obtain a proportion (which he may again prescribe) of the votes cast at the election, and for this amount to be met from the general revenue.

9. The Secretary considers that if the CSA is passed, the Government would have to pay the reimbursement from the general revenue. Even though the CSA only imposes a potential liability on public expenditure, it is nevertheless a new expenditure not already covered by legislative authorization and may not be moved without the Chief Executive's consent.

Hon LEE Wing-tat's CSAs to Clauses 2 and 47 and new Clause 30A

10. Mr LEE's CSAs seek to prohibit the carrying out of prescribed forms of canvassing activities on the day of election.

11. The Secretary considers that the CSAs are not relevant to the objects and scope of the Bill because the supervision and regulation of canvassing activities is not one of the Bill's objects.

Dr Hon C H LEONG's CSAs to various clauses relating to functional constituencies

12. Dr LEONG's CSAs seek to establish a Chinese Medicine functional constituency to replace the new Catering functional constituency proposed in the Bill.

13. The Secretary considers that the proposal, if passed, will enable up to 7,000 persons to become eligible electors for the proposed Chinese Medicine functional constituency, whereas the potential electorate size of Government's proposed Catering functional constituency is about 4,800. Moreover, a full-scale, fresh voter registration exercise has to be conducted for Dr LEONG's proposed functional constituency. Additional resources will be required to conduct the exercise, process applications for voter registration, and meet additional expenses on free election postage and on polling and counting arrangements etc. The proposal has therefore a charging effect under Rule 57 of the Rules of Procedure.

Dr Hon C H LEONG's CSAs to Clauses 13 and 43 relating to the Medical functional constituency and the relevant membership of the Election Committee

14. Dr LEONG's CSAs seek to include, in the Medical functional constituency, Chinese medicine practitioners registered or listed under the Chinese Medicine Ordinance, and to merge the existing Medical and Chinese Medicine Election Committee Subsectors into one which is to return 40 members of the Election Committee.

15. The Secretary considers that the proposal, if passed, will double the number of eligible electors for the Medical functional constituency, from 7,000 to about 14,000. This entails a full-scale, fresh voter registration exercise and additional resources for conducting the exercise, processing applications for voter registration, and for meeting additional expenses on free election postage and on polling and counting arrangements etc. The proposal has a charging effect under Rule 57 of the Rules of Procedure.

Hon SIN Chung-kai's CSAs to Clauses 13 and 16 relating to eligible electors for the Information Technology functional constituency

16. Mr SIN's CSAs seek to increase the number of persons who may become eligible electors in the functional constituency.

17. The Secretary considers that the proposal, if passed, will increase the size of the functional constituency from about 3,400 to about 40,000. An additional amount of about \$6 million will be required for processing matters relating to the election for this functional constituency. The proposal has therefore a charging effect under Rule 57 of the Rules of Procedure.

Rulings

18. Having considered the views of the Secretary for Constitutional Affairs, the responses of the Members concerned to the Secretary's views, and the opinion of the Counsel to the Legislature, I rule that, with the exception of the CSAs proposed by Dr Hon YEUNG Sum, all the proposed CSAs to the Bill may be admitted for the Council's consideration. My opinions are detailed in the following paragraphs.

Dr Hon YEUNG Sum's proposed CSAs

19. The purpose of the Legislative Council Ordinance is to give effect to the provisions in the Basic Law relating to the Legislative Council. The specific purpose of this Bill is to make the necessary arrangements for the second term of the Legislative Council, including the Council's composition. Article 68 of the Basic Law stipulates that the specific method for forming the Council is prescribed in Annex II to the Basic Law, and Annex II stipulates that the Council in the second term shall have only 24 members returned by

geographical constituencies through direct elections. Dr YEUNG's proposal to change that number to 60 and to abolish functional constituencies and the Election Committee clearly goes outside the scope of the Bill and therefore may not be moved.

Hon CHEUNG Man-kwong's proposed CSA

20. Although Mr CHEUNG's CSA, if passed, may impose a potential liability on public expenditure, the Chief Executive in Council is still not obliged by law to make the proposed regulation. He has full powers to decide not to make regulations to provide for the proposed reimbursement from the general revenue if, taking all circumstances into account, he does not deem it appropriate to do so. If he so decides to make such regulations, it is he who makes a charge on the general revenue by allowing the reimbursement. The proposed CSA is therefore in order.

Hon LEE Wing-tat's proposed CSAs

21. As the specific purpose and theme of the Bill is to make the necessary arrangements for the second term of the Legislative Council, including its composition, the elections and the activities relating to it, I am of the opinion that the proposal to regulate the election activities on election day is relevant to the subject matter of the Bill and may be considered by the Council.

Dr Hon C H LEONG's proposed CSAs

22. One of the purposes of the Bill relates to the elections of members to form the Council. The expenditure on voter registration, processing applications, free postage, polling and counting etc are all relevant to the elections for forming the Council and, in my opinion, are already authorized by law, irrespective of what the constituencies may be which are to return

members of the Council, or of the sizes of these constituencies.

23. It is right that I should point out here that the Secretary has not expressed the same view, in connection with the CSAs proposed by Hon Ms Christine LOH, Hon Mrs Miriam LAU and Hon Mrs Selina CHOW, which respectively also seek to add eligible electors to the Medical functional constituency, the Transport functional constituency, and the Wholesale and Retail functional constituency. In my opinion, it is not appropriate to assess whether a CSA which proposes to increase the electorate of a functional constituency has a "charging effect" solely on the basis of the number of electors it proposes to increase. Dr LEONG's proposed CSAs are therefore admissible for consideration by the Council.

Hon SIN Chung-kai's proposed CSA

24. For the same reasons stated in paragraphs 22 and 23 above, I am also of the opinion that Mr SIN's proposed CSAs do not have a charging effect under Rule 57 of the Rules of Procedure.

(Mrs Rita FAN)
President
Legislative Council

12 July 1999